

A.G. Contract No.: KR05-0549TRN  
ECS File No.: JPA 05-003  
Project No.: TEA-YUM-0(009)A  
Section: Gateway Park  
Project: Multi-use Pathway  
TRACS No.: SL536 01C  
Budget Source Item No.: n/a

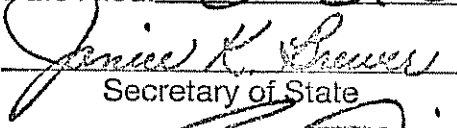
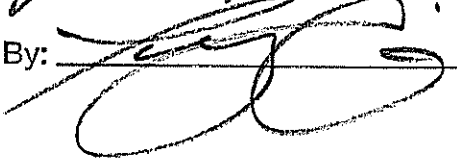
## INTERGOVERNMENTAL AGREEMENT

BETWEEN  
THE STATE OF ARIZONA  
AND  
CITY OF YUMA

THIS AGREEMENT is entered into this date August 31, 2005, pursuant to Arizona Revised Statutes § 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the CITY OF YUMA, acting by and through its MAYOR and CITY COUNCIL (the "City").

### I. RECITALS

1. The State is empowered by Arizona Revised Statutes § 28-401 to enter into this Agreement and has delegated the undersigned the authority to execute this Agreement on behalf of the State.
2. The City is empowered by Arizona Revised Statutes § 48-572 to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the City.
3. The interest of the State for this Project is in the acquisition of Federal Funds for the use and benefit of the City and is authorized as the designated agent. Funds expended for the Project, are authorized by reason of Federal Law and regulations.
4. The Project lies within the boundary of the City and has been selected by the City; the survey of the Project has been completed; and the plans, estimates and specifications will be prepared and, as required, submitted to the State and Federal Highway Administration (FHWA) for its approval.
5. The City, in order to obtain Federal funds for the construction of the Project, is willing to provide City funds to match Federal Funds in the ratio required or as finally fixed and determined by the City, State and FHWA, including actual construction engineering (CE) and administration costs.

NO. 27709  
Filed with the Secretary of State  
Date Filed: 8-31-05  
  
Secretary of State  
By: 

6. The work embraced in this Agreement is for the construction and maintenance of a multi-use pathway, sidewalks, pedestrian lighting, associated landscaping, and an irrigation system in Gateway Park, hereinafter referred to as the "Project". The estimated costs are as follows:

Construction TRACS No.: SL536 01C

***\*Total Estimated Cost of the Project*** ***\$1,020,000.00***

|  |                             |
|--|-----------------------------|
| Federal Aid Funds @ 94.3% of \$530,000.00 (Capped)           | \$ 500,000.00               |
| Estimated City Funds @ 5.7% of \$530,000.00                  | \$ 30,000.00                |
| City Funds @ 100% (difference between total cost and capped) | <u>\$ 490,000.00</u>        |
| <b><i>Total Estimated City Funds</i></b>                     | <b><i>\$ 520,000.00</i></b> |

\*(Includes construction engineering and construction administration, and incidentals)

**THEREFORE**, in consideration of the mutual agreements expressed herein, it is agreed as follows:

## **II. SCOPE OF WORK**

### **1. The State shall:**

a. Agree to be the City's authorized agent for the Project and submit a program containing the aforementioned Project to FHWA with the recommendation that it be approved for construction and funding. Should costs exceed the maximum Federal funds available, it is understood and agreed that the City will be responsible for any overage.

b. Approve the Project if such project construction funds are available by FHWA for construction of the Project. The State and FHWA hereby designated the City to self-administer the Project.

c. Upon execution of this Agreement, make payments to the City for the direct actual cost of the construction of the Project, plus CE and administration of the Project, within thirty-days (30) after receipt and approval of an invoice.

d. Not be obligated to maintain said Project, should the City fail to budget or provide continuous and proper maintenance as set forth in this Agreement, unless assumed by another agency.

### **2. The City shall:**

a. With the aid and consent of the FHWA and the State using Arizona Procurement Procedures, proceed to advertise for, receive and open bids, subject to the concurrence of the FHWA and the State. Enter into a contract(s) with a firm(s) to whom the award is made for the construction of the Project. The Project will be performed, completed, accepted and paid for in accordance with the requirements of the Project Plans, Special Provisions, and Standard Specifications at the lowest bid price.

b. Provide personnel to administer and supervise construction. All construction Project change orders are to be copied to the State. The FHWA will participate in the CE and administration cost provided by the City up to 94.3% percent of the actual cost. Construction engineering and administration costs not participated in by FHWA shall be borne by the City.

c. Consent to any inspections performed by the State, provide records or audit any books of the City in order for the State to assure itself that the monies on the Project have been spent and the Project completed in accordance with the plans and specifications, statutes, rules and regulations of the State and Federal Government.

d. Upon execution of this Agreement, invoice the State for the estimated 94.3% Federal Aid construction, CE and administration costs addressed under this Agreement. The City is entirely responsible for all costs incurred in performing and accomplishing the work as set forth in this Agreement whether covered by Federal funding or not.

e. Upon completion of the Project, provide for at its own cost and as an annual item in its budget or to provide continuous and proper maintenance to the Project, including but not limited to; electrical power, water and landscape care.

### **III. MISCELLANEOUS PROVISIONS**

1. The State assumes no financial obligation or liability under this Agreement or for any resulting construction project. The City assumes full responsibility for the design, plans, specifications, reports, the engineering in connection therewith and the construction of the improvements contemplated, cost overruns and construction claims. The City shall require its contractors to name the State as an additional insured in the contractor's insurance policies. The City shall also require its contractors to name the State as an additional indemnitee in the City contracts with its contractors. It is understood and agreed that the State's participation is confined solely to securing federal aid; that any damages arising from carrying out, in any respect, the terms of this Agreement or any modification thereof, shall be solely the liability of the City and that to the extent permitted by law, the City hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever which is caused by any activity, condition, misrepresentation, directives, instruction or event arising out of the performance or nonperformance of any provisions of this Agreement by the State, any of its departments, agencies, officers and employees of the City, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include, in the event of any action, court costs, and expenses of litigation and attorneys' fees.

2. The cost of the construction and the construction engineering and administration work covered by this Agreement is to be borne by FHWA and the City, each in the proportion prescribed or as fixed and determined by FHWA as stipulated in this Agreement. Therefore, City agrees to furnish and provide the difference between the total cost of the work provided for in this Agreement and the amount of Federal Aid received.

3. This Agreement shall become effective upon filing with the Secretary of State.

4. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.

5. The provisions of Arizona Revised Statutes § 35-214 are applicable to this Agreement. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes § 12-1518.

6. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 121-1-12213) and all applicable Federal regulations under the Act including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona, and incorporated herein by reference regarding "Non-Discrimination".

7. Non-Availability of Funds: Every payment obligation of the State under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this contract may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event

this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

8. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes § 12-1518.

9. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation  
Joint Project Administration  
205 S. 17<sup>th</sup> Avenue – Mail Drop 616E  
Phoenix, AZ 85007  
(602) 712-7525

City of Yuma  
Attn: City Administrator  
One City Plaza  
PO Box 13014  
Yuma, AZ 85366-3014  
(928) 373-5011

10. In accordance with Arizona Revised Statutes § 11-952, (D) attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this State to enter into this Agreement and that the Agreement is in proper form.

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IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

**CITY OF YUMA**

**STATE OF ARIZONA**

Department of Transportation

By Mark S. Watson  
MARK S. WATSON  
City Administrator

By Susan Tellez  
SUSAN TELLEZ  
Contract Administrator

ATTEST:

By Brigitte M. Kuiper  
BRIGITTA M. KUIPER  
City Clerk

JPA 05-003

APPROVAL OF THE CITY OF YUMA

I have reviewed the above referenced intergovernmental Agreement between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and the CITY OF YUMA, an Agreement among public agencies which, has been reviewed pursuant to A.R.S. § 11-951 through § 11-954 and declare this Agreement to be in proper form and within the powers and authority granted to the CITY under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this Agreement.

DATED this 15 day of August, 2005.

Raymond Ulias (for)  
City Attorney

RESOLUTION NO. R2005-78

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF YUMA,  
ARIZONA, AUTHORIZING AN INTERGOVERNMENTAL  
AGREEMENT BETWEEN THE CITY OF YUMA AND THE STATE OF  
ARIZONA, TO PROVIDE FEDERAL FUNDING FOR GATEWAY PARK  
PATHWAY IMPROVEMENTS, FROM 4<sup>th</sup> AVENUE TO THE OCEAN-  
TO-OCEAN HIGHWAY BRIDGE**

WHEREAS, the City of Yuma (City) desires to construct the Gateway Park Pathway, between 4<sup>th</sup> Avenue and the Ocean-to-Ocean Highway Bridge; and,

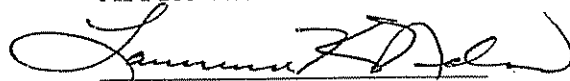
WHEREAS, the State of Arizona (State) has agreed to provide federal funding for the project through a transportation enhancement grant; and

WHEREAS, the State and the City wish to enter into an Intergovernmental Agreement allocating federal funds to the City, to complete the Gateway Park Pathway project, between 4<sup>th</sup> Avenue and Ocean-to-Ocean Highway Bridge, in accordance with the approved plans and specifications.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Yuma, Arizona, that the City Administrator is authorized and directed to execute an Intergovernmental Agreement with the State of Arizona, as shown in Exhibit A, attached hereto and by this reference made a part hereof, to provide federal funding for the said Gateway Park Pathway project.

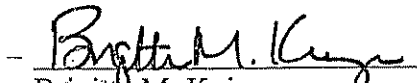
Passed and adopted this 3rd day of August, 2005.

APPROVED:

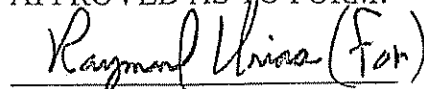


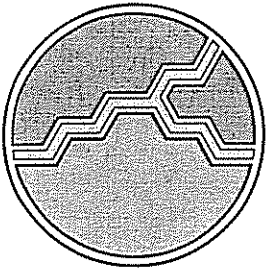
Lawrence K. Nelson  
Mayor

ATTESTED:

  
Brigitta M. Kuiper  
City Clerk

APPROVED AS TO FORM:

  
Steven W. Moore  
City Attorney



**City of YUMA**

**Office of the  
City Clerk**

One City Plaza  
P O. Box 13012  
Yuma, Arizona 85366-3012  
(928) 373-5035  
FAX (928) 373-5036  
TTY (928) 373-5149

**CERTIFICATION**

I, Edna M. Martin, do hereby certify that I am the duly appointed Deputy City Clerk of the City of Yuma, Arizona, and that the attached resolution, Resolution No. R2005-78, is a true and correct copy of the resolution on file in the Office of the City Clerk.

Edna M. Martin, Deputy City Clerk

8.8.05

Date

## EXHIBIT A

A.G. Contract No.: KR05-0549TRN  
ECS File No.: JPA 05-003  
Project No.: TEA-YUM-0(009)A  
Section: Gateway Park  
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TRACS No.: SL536 01C  
Budget Source Item No.: n/a

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AND  
CITY OF YUMA

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1. The State is empowered by Arizona Revised Statutes § 28-401 to enter into this Agreement and has delegated the undersigned the authority to execute this Agreement on behalf of the State.
  2. The City is empowered by Arizona Revised Statutes § 48-572 to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the City.
  3. The interest of the State for this Project is in the acquisition of Federal Funds for the use and benefit of the City and is authorized as the designated agent. Funds expended for the Project, are authorized by reason of Federal Law and regulations.
  4. The Project lies within the boundary of the City and has been selected by the City; the survey of the Project has been completed; and the plans, estimates and specifications will be prepared and, as required, submitted to the State and Federal Highway Administration (FHWA) for its approval.
  5. The City, in order to obtain Federal funds for the construction of the Project, is willing to provide City funds to match Federal Funds in the ratio required or as finally fixed and determined by the City, State and FHWA, including actual construction engineering (CE) and administration costs.
-



6. The work embraced in this Agreement is for the construction and maintenance of a multi-use pathway, sidewalks, pedestrian lighting, associated landscaping, and an irrigation system in Gateway Park, hereinafter referred to as the "Project". The estimated costs are as follows:

Construction TRACS No.: SL536 01C

***\*Total Estimated Cost of the Project***

***\$1,020,000.00***

Federal Aid Funds @ 94.3% of \$530,000.00 (Capped)

\$ 500,000.00

Estimated City Funds @ 5.7% of \$530,000.00

\$ 30,000.00

City Funds @ 100% (difference between total cost and capped)

\$ 490,000.00

***Total Estimated City Funds***

***\$ 520,000.00***

\*(Includes construction engineering and construction administration, and incidentals)

THEREFORE, in consideration of the mutual agreements expressed herein, it is agreed as follows:

## **II. SCOPE OF WORK**

### **1. The State shall:**

a. Agree to be the City's authorized agent for the Project and submit a program containing the aforementioned Project to FHWA with the recommendation that it be approved for construction and funding. Should costs exceed the maximum Federal funds available, it is understood and agreed that the City will be responsible for any overage.

b. Approve the Project if such project construction funds are available by FHWA for construction of the Project. The State and FHWA hereby designated the City to self-administer the Project.

c. Upon execution of this Agreement, make payments to the City for the direct actual cost of the construction of the Project, plus CE and administration of the Project, within thirty-days (30) after receipt and approval of an invoice.

d. Not be obligated to maintain said Project, should the City fail to budget or provide continuous and proper maintenance as set forth in this Agreement, unless assumed by another agency.

### **2. The City shall:**

a. With the aid and consent of the FHWA and the State using Arizona Procurement Procedures, proceed to advertise for, receive and open bids, subject to the concurrence of the FHWA and the State. Enter into a contract(s) with a firm(s) to whom the award is made for the construction of the Project. The Project will be performed, completed, accepted and paid for in accordance with the requirements of the Project Plans, Special Provisions, and Standard Specifications at the lowest bid price.

b. Provide personnel to administer and supervise construction. All construction Project change orders are to be copied to the State. The FHWA will participate in the CE and administration cost provided by the City up to 94.3% percent of the actual cost. Construction engineering and administration costs not participated in by FHWA shall be borne by the City.

c. Consent to any inspections performed by the State, provide records or audit any books of the City in order for the State to assure itself that the monies on the Project have been spent and the Project completed in accordance with the plans and specifications, statutes, rules and regulations of the State and Federal Government.

d. Upon execution of this Agreement, invoice the State for the estimated 94.3% Federal Aid construction, CE and administration costs addressed under this Agreement. The City is entirely responsible for all costs incurred in performing and accomplishing the work as set forth in this Agreement whether covered by Federal funding or not.

e. Upon completion of the Project, provide for at its own cost and as an annual item in its budget or to provide continuous and proper maintenance to the Project, including but not limited to; electrical power, water and landscape care.

### **III. MISCELLANEOUS PROVISIONS**

1. The State assumes no financial obligation or liability under this Agreement or for any resulting construction project. The City assumes full responsibility for the design, plans, specifications, reports, the engineering in connection therewith and the construction of the improvements contemplated, cost overruns and construction claims. The City shall require its contractors to name the State as an additional insured in the contractor's insurance policies. The City shall also require its contractors to name the State as an additional indemnitee in the City contracts with its contractors. It is understood and agreed that the State's participation is confined solely to securing federal aid; that any damages arising from carrying out, in any respect, the terms of this Agreement or any modification thereof, shall be solely the liability of the City and that to the extent permitted by law, the City hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever which is caused by any activity, condition, misrepresentation, directives, instruction or event arising out of the performance or nonperformance of any provisions of this Agreement by the State, any of its departments, agencies, officers and employees of the City, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include, in the event of any action, court costs, and expenses of litigation and attorneys' fees.

2. The cost of the construction and the construction engineering and administration work covered by this Agreement is to be borne by FHWA and the City, each in the proportion prescribed or as fixed and determined by FHWA as stipulated in this Agreement. Therefore, City agrees to furnish and provide the difference between the total cost of the work provided for in this Agreement and the amount of Federal Aid received.

3. This Agreement shall become effective upon filing with the Secretary of State.

4. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.

5. The provisions of Arizona Revised Statutes § 35-214 are applicable to this Agreement. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes § 12-1518.

6. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 121-1-12213) and all applicable Federal regulations under the Act including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona, and incorporated herein by reference regarding "Non-Discrimination".

7. Non-Availability of Funds: Every payment obligation of the State under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this contract may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event

this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

8. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes § 12-1518.

9. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation  
Joint Project Administration  
205 S. 17<sup>th</sup> Avenue – Mail Drop 616E  
Phoenix, AZ 85007  
(602) 712-7525

City of Yuma  
Attn: City Administrator  
One City Plaza  
PO Box 13014  
Yuma, AZ 85366-3014  
(928) 373-5011

10. In accordance with Arizona Revised Statutes § 11-952, (D) attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this State to enter into this Agreement and that the Agreement is in proper form.

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IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

CITY OF YUMA

STATE OF ARIZONA  
Department of Transportation

By \_\_\_\_\_  
MARK S. WATSON  
City Administrator

By \_\_\_\_\_  
SUSAN TELLEZ  
Contract Administrator

ATTEST:

By \_\_\_\_\_  
BRIGITTA M. KUIPER  
City Clerk

JPA 05-003

APPROVAL OF THE CITY OF YUMA

I have reviewed the above referenced intergovernmental Agreement between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and the CITY OF YUMA, an Agreement among public agencies which, has been reviewed pursuant to A.R.S. § 11-951 through § 11-954 and declare this Agreement to be in proper form and within the powers and authority granted to the CITY under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this Agreement.

DATED this 26 day of July, 2005.

Raymond Unice (for)  
City Attorney



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ARIZONA

TERRY GODDARD  
ATTORNEY GENERAL

CIVIL DIVISION  
TRANSPORTATION SECTION  
WRITER'S DIRECT LINE: 602.542.8855

**INTERGOVERNMENTAL AGREEMENT**  
**DETERMINATION**

A.G. Contract No. KR05-0549TRN (**JPA 05-003**), an Agreement between public agencies, i.e., *The State of Arizona* and *City of Yuma*, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: August 24, 2005

TERRY GODDARD  
Attorney General

A handwritten signature in cursive script, reading "Susan Davis", written over a horizontal line.

Susan E. Davis  
Assistant Attorney General  
Transportation Section

SED:mjf  
Attachment  
920799